

14-1626  
Chong v. ChangUNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUITSUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 3<sup>rd</sup> day of April, two thousand fifteen.

PRESENT: DENNIS JACOBS,  
DENNY CHIN,  
Circuit Judges,  
ELIZABETH A. WOLFORD,  
District Judge.\*

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MICHAEL K. CHONG,  
Appellant,

-v.-

14-1626

KWO SHIN CHANG, STEVEN WONG,  
Appellees.\*\*

\* The Honorable Elizabeth A. Wolford, United States District Judge for the Western District of New York, sitting by designation.

\*\* The Clerk of Court is directed to amend the official caption as set forth above.

1       **FOR APPELLANT:**                   MICHAEL K. CHONG, Fort Lee, New  
2   Jersey.

4       **FOR APPELLEES:**                   MORTON S. MINSLEY, New York, New  
5   York.

7           Appeal from a judgment of the United States District  
8           Court for the Southern District of New York (Forrest, J.).

10 UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED  
11 AND DECREED that the judgment of the district court be  
12 VACATED AND REMANDED.

Michael K. Chong appeals from the judgment of the United States District Court for the Southern District of New York (Forrest, J.), granting appellees' motion for attorney's fees and costs as a sanction for pursuing a baseless third-party complaint against appellees, Kwo Shin Chang and Steven Wong. We assume the parties' familiarity with the underlying facts, the procedural history, and the issues presented for review.

23 Chang, Wong, and others filed an action against Chong's  
24 client, Vihn Ly, asserting claims under the Fair Labor  
25 Standards Act ("FLSA") and New York Labor Law ("NYLL") in  
26 connection with the operation of a restaurant, Neo Sushi.  
27 Ly's answer asserted counterclaims against Chang and Wong  
28 for fraud and breach of an alleged partnership agreement  
29 among Ly, Chang and Wong to purchase and own Neo Sushi. An  
30 amended complaint was filed in which Chang and Wong were no  
31 longer plaintiffs; Ly asserted the same claims against Chang  
32 and Wong, brought in the form of a third-party complaint.

34 After a trial, the district court entered judgment in  
35 favor of Chang and Wong, concluding "that there was a  
36 failure of proof as to essential elements of both claims."  
37 Special App. at 5. Chang and Wong sought sanctions in the  
38 form of fees and costs pursuant to Federal Rule of Civil  
39 Procedure 11, 28 U.S.C. § 1927, and the inherent power of  
40 the court. The court determined sanctions were "warranted  
41 under all three asserted grounds." *Id.* at 7.

We review a district court's award of sanctions, whether under Rule 11, § 1927, or its inherent power for abuse of discretion. See StreetEasy, Inc. v. Chertok, 752 F.3d 298, 306-07 (2d Cir. 2014) (discussing Rule 11 sanctions); Enmon v. Prospect Capital Corp., 675 F.3d 138,

1 143 (2d Cir. 2012) (discussing § 1927 and the court's  
 2 inherent power).

3  
 4 Chong argues that the district court erred in imposing  
 5 sanctions pursuant to Rule 11 because Chang and Wong failed  
 6 to comply with the procedural requirements of the Rule's  
 7 safe harbor provision. The district court found that  
 8 "sufficient notice" was provided because opposing counsel  
 9 warned Chong by e-mail "about the possibility of attorneys'  
 10 fees if he had to sit through trial." Special App. at 8.  
 11 But the "safe-harbor provision is a strict procedural  
 12 requirement" and "[a]n informal warning . . . without  
 13 service of a separate Rule 11 motion is not sufficient."  
 14 Star Mark Mgmt., Inc. v. Koon Chun Hing Kee Soy & Sauce  
 15 Factory, Ltd., 682 F.3d 170, 175 (2d Cir. 2012) (per  
 16 curiam). The e-mail sent to Chong in this case does not  
 17 satisfy the requirements under the Rule.

18  
 19 Although the court set out the applicable standards for  
 20 sanctions under Rule 11, § 1927, and the court's inherent  
 21 authority, it did not engage in "separate consideration of  
 22 the available sanctions machinery[, which] is not only  
 23 warranted, but necessary for meaningful review." United  
 24 States v. Int'l Bhd. of Teamsters, Chauffeurs, Warehousemen  
 25 & Helpers of Am., 948 F.2d 1338, 1346 (2d Cir. 1991). A  
 26 district court should "treat[] and determine[ each  
 27 authority] separately" and the court's "resulting findings  
 28 must appear with reasonable specificity in terms of the  
 29 perceived misconduct and the sanctioning authority."  
 30 MacDraw, Inc. v. CIT Grp. Equip. Fin., Inc., 73 F.3d 1253,  
 31 1262 (2d Cir. 1996) (internal quotation marks omitted).

32  
 33 The court's opinion lacks the specific findings  
 34 required to support the imposition of sanctions under either  
 35 its inherent authority or § 1927, and remand is therefore  
 36 warranted. Schlaifer Nance & Co. v. Estate of Warhol, 194  
 37 F.3d 323, 338 (2d Cir. 1999). While it is true that "[b]ad  
 38 faith can be inferred when the actions taken are so  
 39 completely without merit as to require the conclusion that  
 40 they must have been undertaken for some improper purpose,"  
 41 id. (internal quotation marks omitted), the court's  
 42 determination that "there was absolutely no merit to the  
 43 claims asserted" is not sufficient. Special App. 3 n.3.

44  
 45 The standard requires "clear evidence that (1) the  
 46 offending party's claims were entirely meritless and (2) the  
 47 party acted for improper purposes." Revson v. Cinque &

Cinque, PC, 221 F.3d 71, 79 (2d Cir. 2000) (internal quotation marks omitted). The court's only findings are that: "third-party plaintiffs failed to introduce evidence sufficient to support even a prima facie" claim; the "failure[] of proof [was] . . . powerful evidence of the fact that the complaint was meritless from the start;" and "[t]his obvious lack of merit gives rise to precisely the inference that . . . the third-party complaint was filed solely to pressure plaintiffs into withdrawing meritorious FLSA and NYLL claims." Special App. at 7-8. These findings collapse the relevant standard into a single requirement that the court find the claims baseless. But, as the district court recognized, "one of the ways this could [have] play[ed] out is with a wage and labor claim that there was a period of time during which the partnership operated where there were monies due and owing to the employees and that [the] debt, if any, [was] owed by the partnership" as opposed to by Ly alone. Appellant App. at 71-72.

For the foregoing reasons, and finding no merit in Chang and Wong's other arguments, we hereby **VACATE** and **REMAND** the judgment of the district court.

FOR THE COURT:

CATHERINE O'HAGAN WOLFE, CLERK



A True Copy

Catherine O'Hagan Wolfe, Clerk

United States Court of Appeals, Second Circuit

